

**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
VINCENNES UNIVERSITY**



TERRANCE HOOD v. STATE OF INDIANA

Appeal from:
Marion Superior Court
The Honorable Tanya
Walton-Pratt, Judge

Oral Argument:
Wednesday, October 31, 2007
11:00 a.m.—12 noon CT
30 minutes each side

**CRIMINAL LAW
SELF-DEFENSE**

Did the trial court err by excluding evidence relevant to appellant's claim of self-defense?

Did the State fail to disprove the appellant's claim of self-defense?

**PROPRIETY OF ENHANCED/CONSECUTIVE SENTENCES
APPROPRIATENESS OF SENTENCE**

Is the appellant's sentence appropriate?

CASE SYNOPSIS

**Facts and Procedural
History**

During the evening of August 30, 2005, Terrance Hood and Michael Earls went to Village Liquors at 16th and Medford Streets in Indianapolis to buy beer and liquor. When Hood walked out with his beer, a vehicle driven by Eon Truth careened into the parking lot and narrowly missed Hood. Hood and Truth exchanged words and obscenities, and Earls urged Hood to leave. As an intoxicated Truth approached Hood, Hood reached into his minivan and retrieved a gun from between the two front seats. Hood fired two

shots, but Truth did not fall. Truth began to stagger toward the back of Hood's minivan, and Hood fired four more shots. Truth collapsed and later died after suffering massive blood loss.

On September 8, 2005, the State charged Hood with Murder, Indiana Code Section 35-42-1-1, and Carrying a Handgun Without a License, elevated to a Class C felony because of a prior offense, Indiana Code Section 35-47-2-1. On January 30, 2007, a jury found Hood guilty of Voluntary Manslaughter and determined that he was carrying a handgun without a license. Hood stipulated that he had

Terrance Hood v. State of Indiana

CASE SYNOPSIS



previously been convicted of carrying a handgun without a license. On February 9, 2007, the trial court imposed upon Hood consecutive sentences of forty years and six years.

Parties' Arguments

Hood contends that the trial court abused its discretion by excluding evidence relevant to his claim of self-defense; more specifically Earl's testimony that he thought Truth was reaching for a gun. The trial court's decision to exclude evidence that is arguably relevant will be reversed only upon a showing that the trial court's discretion was manifestly abused and that the defendant was denied a fair trial. Jackson v. State, 490 N.E.2d 1115, 1118 (Ind. 1986). However, this Court has recognized that "when a defendant claims that he acted in self-defense, evidence legitimately tending to support his theory is admissible" and "a defendant is entitled to support his claim of self-defense by introducing evidence of matters that would make his fear of the victim reasonable." Brand v. State, 766 N.E.2d 772, 780 (Ind. Ct. App. 2002), trans. denied.

The State called Earls as a witness during its case-in-chief. Earls testified that Truth "started reaching towards his waist line" before Hood reached into the vehicle and retrieved his gun. (Tr. 153.) On cross-examination, Hood's attorney elicited testimony from Earls that Truth was drunk and "a little aggressive" as he approached Hood. (Tr. 160.) Counsel subsequently asked "Did it appear to you like he was reaching for a gun" to which the State objected on grounds of relevance. (Tr. 161.) According to the State,

only Hood's subjective belief was relevant, and the trial court agreed. Hood's counsel requested permission to make an offer of proof, to which the State responded by stipulating, for purposes of an offer of proof, "that in the deposition [Earls] said he thought he was reaching for a gun ... that's what he would say." (Tr. 178.)

Hood also claims that the State failed to disprove his claim of self-defense. A valid claim of self-defense is legal justification for an otherwise criminal act. Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997). When a defendant raises a claim of self-defense, he is required to show three facts: (1) he was in a place where he had a right to be; (2) he acted without fault; and (3) he had a reasonable fear of death or serious bodily harm. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt for the defendant's claim to fail. Miller, 720 N.E.2d at 700. The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief. Id. Whether the State has met its burden is a question of fact for the factfinder. Id. The trier of fact is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor. Birdsong,

Case Synopsis (continued)

685 N.E.2d at 45. Here, the State essentially relied upon evidence that Hood used excessive force even if Truth was the initial aggressor, including evidence that Truth had six separate gunshot wounds.

Finally, Hood challenges his sentence, claiming: (1) the sentencing statement is defective because it did not disclose the aggravator supporting consecutive sentences; and (2) his enhanced sentence is inappropriate. The decision to impose consecutive sentences for multiple offenses is generally within the trial court's discretion. *McCarthy v. State*, 749 N.E.2d 528, 539 (Ind. 2001). The imposition of consecutive sentences is a separate and discrete decision from sentence enhancement. *Ajabu v. State*, 722 N.E.2d 339, 344 (Ind. 2000). However, a single aggravating circumstance may be used both to enhance a sentence and to impose consecutive sentences. *Id.*

At the sentencing hearing, the trial court found Hood's history of delinquency and adult criminal activity to be aggravating. As mitigating circumstances, the trial court found that Hood's dependents would suffer hardship during his incarceration, Hood expressed remorse, and Hood suffered post-traumatic stress after the murders of his father and his uncle. The latter was given minimal weight. The sentencing abstract includes an additional aggravator – the fact that Hood violated his probation – in support of the enhanced sentences. The abstract does not specify an aggravator supporting the order for consecutive sentences.

The State acknowledges that the imposition of consecutive sentences must be supported by at least one valid aggravating circumstance. However, the State then argues that the trial court must have necessarily concluded that Hood's criminal history was the aggravator to support consecutive sentences, although this was

not explicitly stated. The bench discussion at the sentencing hearing implies that the trial court believed consecutive sentences could be imposed for two separate crimes without making any additional finding.

Hood also claims that his sentence is inappropriate in that his character and the nature of the offenses do not support such a harsh sentence. He points out that he received a sentence for Voluntary Manslaughter approximating that which he could have received for Murder. (Pursuant to Indiana Code 35-50-2-4, the sentencing range for Voluntary Manslaughter, a Class A felony, is 20 to 50 years, with the advisory sentence being 30 years. In contrast, the sentencing range for Murder is 45 to 65 years, with the advisory sentence being 55 years. Ind. Code § 35-50-2-3.) Regarding the nature of the offenses, Hood does not point to facts of record distinguishing the present offenses of Voluntary Manslaughter and Carrying a Handgun Without a License from typical offenses of those categories. With respect to his character, Hood was employed and supporting his child. Several of his prior offenses are juvenile. However, as an adult, he was convicted of Resisting Law Enforcement, a Class A misdemeanor, Carrying a Handgun Without a License, a Class A misdemeanor, and Perjury, a Class D felony. He was on probation for Perjury when he committed the instant offenses. There was a pending allegation of violation of probation due to an arrest on August 14, 2005 for Resisting Law Enforcement and Disorderly Conduct. In 2004, Hood's prior grant of probation was revoked.

Opinion in this case expected:
By end of calendar year 2007

Please check with Professor Stearns or read the opinion on the Court's website.

For more information, see
<http://www.in.gov/judiciary/appeals/>

Or contact:
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TODAY'S PANEL OF JUDGES

Hon. Carr L. Darden (Marion County), Presiding

- **Judge of the Court of Appeals since October 1994**

Carr L. Darden was named to the Indiana Court of Appeals by Governor Evan Bayh in October 1994 and was retained on the Court by election in 1998. Prior to his appointment, he served as a presiding judge in the Marion County Superior Court and the Marion County Municipal Court systems. He also served as the Chief Deputy State Public Defender.

Judge Darden received his BS degree from Indiana University School of Business in 1966 and his JD degree from Indiana University School of Law in Indianapolis in 1970. He is also a 1998 graduate of the Judicial College of Indiana and, in 2004, the Indiana Graduate Program for Judges.

In November 2004, Judge Darden received the Paul H. Buchanan, Jr. Award of Excellence by the Indianapolis Bar Foundation, and in May 2006, the Distinguished Alumni Award at the annual IU Law Alumni Association reception. He is also the recipient of two Sagamores of the Wabash, one of Indiana's

highest distinguished citizen award. However, one of the awards that he cherishes most is the recognition by his peers of being "Exceptionally Qualified" to serve as a trial court judge. Judge Darden is a native of Nashville, Tennessee but has lived in Indiana most of his life; therefore, he is a proud Hoosier by choice. He and his wife recently celebrated their 50th wedding anniversary. Judge Darden considered it an honor to serve in the United States military and received an honorable discharge from the U.S. Air Force in 1959.

Judge Darden is deeply involved in his church and community and has served on the boards of many charitable organizations. He has participated at numerous legal and education seminars. He is a lifetime member of the NAACP, the National Bar Association and the American, Indiana State, and Marion County Bar Associations.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

Today's oral argument is the 196th case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. L. Mark Bailey (Decatur County)

- Judge of the Court of Appeals since January 1998

L. Mark Bailey was raised in Decatur County on the family farm first home-steaded by his ancestors more than 150 years ago. He was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon in January of 1998 and was retained on the Court by election in 2000. Before his appointment, Judge Bailey was a trial court judge, an administrative law judge, and a practicing attorney. A husband and father, he earned his B.A. from the University of Indianapolis in 1978; his J.D. from Indiana University School of Law at Indianapolis in 1982; and his M.B.A. from Indiana Wesleyan University in 1999. He was elected judge of the Decatur County Court in 1991. From 1992 until his appointment to the Court of Appeals, he served as judge of the Decatur Superior Court.

During his legal career, Judge Bailey has served public interest and professional organizations in various capacities. He chaired the Local Coordinating Council of the Governor's Task Force for a Drug-Free Indiana and the Judicial Conference Alternative Dispute Resolution committee, and he served on the Judicial Ethics Committee of the Indiana Judicial Center. Judge Bailey is Past-Chair of the Indiana Pro Bono Commission, having been awarded the Indiana Bar Foundation's Pro Bono Publico Award and the 2002 Randall Shepard Award for his pro bono contributions. His writings include, "A New Generation for Pro Bono," published in the *Indiana Lawyer* in 2006. He is also a certified civil mediator and a Master in the Indianapolis American Inn of Court.

A strong supporter of law-related education, Judge Bailey is currently a member of the Judicial Education Committee of the Judicial Conference of Indiana. He is also an adjunct professor at the University of Indianapolis and, in February of 2006, served as the Distinguished Jurist in Residence at Stetson University College of Law. In 2004, Judge Bailey and his First District colleagues received the Indiana Bar Foundation Law-Related Education Award for their commitment to bringing oral arguments into community settings.

Judge Bailey is also a frequent presenter at Indiana Continuing Legal Education seminars, and he regularly volunteers to judge law school trial advocacy and moot court competitions and to teach at National Institute of Trial Advocacy programs. He also currently serves as the Moderator of the Indianapolis Bar Leadership Series.

In 2007, Judge Bailey, who chairs the Court's Administration Committee, was named to another term on the Board of Managers of the Indiana Judges Association and was awarded a judicial scholarship for the two-year National Resource Judges' program, sponsored by the U.S. Department of Justice, to study ways to resolve complex cases involving intricate or novel scientific and technical evidence.

The 15 judges of the Indiana Court of Appeals issue more than 2,500 written opinions each year.

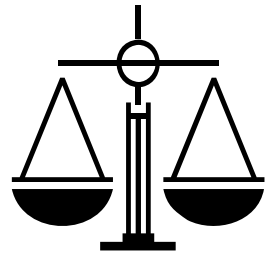
The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998



Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court, Judge Robb was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges. Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was re-elected on the Court of Appeals by election in 2000, is married to a professor at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the United States Navy.

ATTORNEYS FOR THE PARTIES

For Appellant, Terrance A. Hood:

**Kimberly Jackson
Jensen & Associates
Indianapolis**



Kimberly A. Jackson has a background in both journalism and the law. Though currently in private practice in Indianapolis, for years she worked as an attorney in public service at all levels of government – municipal, state and federal.

Ms. Jackson received her B.A. in journalism and political science from Indiana University-Bloomington in 1982. During her senior year at IU, she interned with The Reporters Committee for Freedom of the Press in Washington. Her first job after graduation was as a reporter for the Evansville Courier, where she became the youngest person promoted to the county government beat. In 1983, Ms. Jackson entered law school at Indiana University School of Law-Indianapolis, and earned her J.D. in 1986. She clerked or interned for private firms, the Marion County Municipal Court Public Defender's Office, and Indiana Chief Justice Randall T. Shepard.

In 1987, Ms. Jackson became a staff attorney at the Indiana Supreme Court, eventually rising to Assistant Administrator and then Administrator of the Court. She held this position until 1995.

From 1995 to 1998, Ms. Jackson was the Chief Deputy Clerk for the United States District Court for the Southern District of Indiana. She returned to state government in 1998 as a staff attorney in the Division of State Court Administration, where she focused on matters relating to attorney discipline, special judicial appointments, and local rules. She also served as counsel to the Indiana Supreme Court Commission on Race and Gender Fairness, led Indiana CLEO programs, and helped the Supreme Court with its supervision of trial courts throughout the state.

In 2002, Ms. Jackson joined Jensen & Associates, a four-attorney firm on the north side of Indianapolis. She maintains a general trial and appellate practice, with an emphasis on family law and small business matters. She also serves as a part-time contract appellate attorney for indigent clients of the Marion County Public Defender Agency. Ms. Jackson also serves as a contract counsel for the Indiana Public Defender, appointed as appellate counsel in pauper appeals in trial courts across the state.

ATTORNEYS FOR THE PARTIES

For Appellee, State of Indiana:

Zachary Stock

**Deputy Attorney General
Indianapolis**



Zachary Stock was raised in Frankfort, Indiana, where he graduated from Frankfort High School and played baseball on two sectional championship teams. He attended Ball State University and was recognized as an outstanding graduate by the Economics Department in 1997. From 1997 to 2001, Mr. Stock was an insurance adjuster by day and a law student at Indiana University School of Law – Indianapolis by night.

This is Mr. Stock's second stint in the appeals section of Attorney General Carter's office. His first period of service, in which he also represented the State in criminal appeals, was from 2002 to 2003. Since his admission to the bar in November 2001, he has also worked for the Indiana State Senate and a small law firm specializing in

insurance defense. While in private practice, he appeared in trial courts throughout Indiana. Today's case is Mr. Stock's fourth oral argument before the Indiana Court Appeals and his seventh appellate argument overall.

Mr. Stock and his wife live in Carmel with their two daughters. When not enjoying his time with them, he can be found on a golf course or reading the newspapers, magazines and books that his wife generously allows him to pile around the house. He also serves on the board of directors of Youth Enhancement and Training Initiative, Inc., a not-for-profit corporation that raises money for orphaned and underprivileged children in both the United States and abroad.